

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:) Examiner: Nancy Treptow VOGEL
Audrey GODDARD et al) Art Unit: 1636
Patent No. 7,538,086) Attorney's Docket No. GNE-2830-014
Issued: May 26, 2009) Customer No. 77845
For: PRO1303 POLYPEPTIDES)
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)

FILED VIA EFS
ON JULY 27, 2009

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

MAIL STOP: OFFICE OF PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) ("Determination") on the Issue Notification for United States ("U.S.") Patent No. 7,538,086, states that the Patent Term Adjustment ("PTA") is 658 days. Applicants hereby notify the United States Patent and Trademark Office ("USPTO") that the PTA cited under the Determination is believed to be in error, and request that the PTA accorded to the above-referenced patent be 1028 days.

REMARKS

Patent Term Adjustment

The total PTA was noted as 658 days under the *Determination* on the Issue Notification for U.S. Patent No. 7,538,086.

Under the opinion entered on September 30, 2008 in *Wyeth vs. Dudas* (Civil Action No. 07-1492) ("Wyeth"), the U.S. District Court granted summary judgment to *Wyeth* concluding that the periods of time accorded under 35 U.S.C. 154(b)(1)(A) and under 35 U.S.C. 154(b)(1)(B) only "overlap" if they occur on the same day.

In reviewing the PTA History for Patent No. 7,538,086 as published in the PAIR system of the USPTO, Applicants note that the 3-Year Date, which begins the time period under 35 U.S.C. 154(b)(1)(B), is December 06, 2004. Applicants further note that the time period under 35 U.S.C. 154(b)(1)(B) ends 1032 days later with the filing of a Request for Continued Examination on October 04, 2007. Applicants conclude that there is no "overlap" of time since there is no USPTO delay under 35 U.S.C. 154(b)(1)(A) during the 3-Year Date period beginning on December 06, 2004 and ending on October 04, 2007. Applicants conclude that there are 1032 days of additional PTA in accordance with *Wyeth*.

However, Applicants note that 141 days were consumed by an Appellate Review starting with the Notice of Appeal filing on February 22, 2006 and ending with the Non-Final Rejection mailing on July 13, 2006.

Thus, in accordance with the summary judgment under *Wyeth*, Applicants should be accorded 891 days [(12/06/2004 to 10/04/2007) less the 141 days consumed by the Appellate Review from (02/22/2006 to 07/13/2006)] of additional USPTO Three Year Delay.

The Total USPTO Delay should be corrected to 1402 days.

The Total Applicants' Delay equals 374 days

Thus, the Total PTA is 1028 days in favor of Applicants.

The Applicants request that the USPTO recalculate the PTA in view of the above remarks, and accord Applicants 1028 days of PTA.

CONCLUSION

Applicants request that the PTA for U.S. Patent No. 7,538,086 be corrected to **1028 days** instead of the **658** days indicated on the *Determination*.

Applicants hereby authorize payment from Deposit Account No. **50-4634** (referencing Attorney's Docket No. **GNE-2830-014** for the PTA adjustment request as set forth in 37 C.F.R. § 1.18(e)). However, Applicants do not believe the \$200.00 charge for reconsideration of the PTA should be charged to the Applicants, as Applicants believe that no error was made on the part of the Applicants. Please deposit any refund, or, if applicable, charge any additional fees that may be due in connection with this application, to the afore-mentioned Deposit Account. Should there be any questions, please contact the undersigned at the correspondence address listed below.

Respectfully submitted,



Date: July 27, 2009

By:

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